

DOCKET NO.: KNL-CV20-6046141-S : **SUPERIOR COURT**

THE GARDNER LAKE VOLUNTEER
FIRE COMPANY, INC. : **J.D. OF NEW LONDON**

V. : **AT NEW LONDON**

TOWN OF SALEM : **DECEMBER 22, 2022**

ANSWER SPECIAL DEFENSES AND COUNTERCLAIM

COUNT ONE: BREACH OF EXPRESS CONTRACT

1. The allegations of Paragraph 1 are admitted.
2. The allegations of Paragraph 2 are admitted.
3. The allegations of Paragraph 3 are admitted.
4. The allegations of Paragraph 4 are admitted.
5. The allegations of Paragraph 5 call for a legal conclusion to which no response is required. To the extent that a response is required, Defendant lacks sufficient information to respond and as such, Defendant leaves Plaintiff to its proof.
6. The allegations of Paragraph 6 are admitted.
7. The allegations of Paragraph 7 are admitted.
8. The allegations of Paragraph 8 are admitted.
9. The allegations of Paragraph 9 are admitted.
10. The allegations of Paragraph 10 are admitted.

11. The allegations of Paragraph 11 are admitted to the extent they allege that Plaintiff owns the firehouse at “429 Old Colchester Road as well as the ambulance.” To the extent that Paragraph 11 alleges that the Plaintiff simply “provides space” for “storage” of a firetruck and emergency equipment, such allegation is denied. Plaintiff operates and uses the firetruck and emergency equipment to provide emergency services to residents. Such firetruck and emergency equipment are owned by the Town of Salem and held in trust by the Plaintiff.
12. Defendant admits the allegations of Paragraph 11 so much as they state the Plaintiff and the Defendant entered into an “Emergency Services Agreement” on February 6, 2006. As to the remainder of the allegations in Paragraph 11, Defendant lacks sufficient information to admit or deny and leaves Plaintiff to its proof.
13. Paragraph 13 is denied to the extent it alleges that the Defendant agreed to pay for emergency services that were provided by the Plaintiff without applicable limits. Rather, the Defendant agreed to “appropriate” funds “for the operation, maintenance, and purchase of equipment.” The Defendant lacks sufficient information to respond to the remaining allegations of Paragraph 13 and as such leaves Plaintiff to its proof.
14. The Defendant lacks sufficient information to respond to the allegations of Paragraph 14 and as such leaves Plaintiff to its proof.
15. The allegations of Paragraph 15 are admitted.
16. The allegations of Paragraph 16 are admitted.

17. The Defendant lacks sufficient information to respond to the allegations of Paragraph 17 and as such leaves Plaintiff to its proof.
18. The allegations of Paragraph 18 are denied to the extent they allege the budgeting process created an agreement between GLVFC and the Town of Salem or the Town of Salem's Board of Finance. The remaining allegations of Paragraph 18 are admitted.
19. The allegations of Paragraph 19 are admitted to the extent they allege that a budget was reached for the Town of Salem in 2019. As to the remaining allegations, the Defendant lacks sufficient knowledge to respond and leaves Plaintiff to its proof. To the extent that Plaintiff is alleging that the acceptance and approval of a budget formed a binding agreement between the parties, such allegation is denied.
20. The Defendant lacks sufficient information to respond to the allegations of Paragraph 20 and as such leaves Plaintiff to its proof.
21. The Defendant lacks sufficient information to respond to the allegations of Paragraph 21 and as such leaves Plaintiff to its proof.
22. The allegations of Paragraph 22 are admitted.
23. The allegations of Paragraph 23 are denied.
24. The Defendant lacks sufficient information to respond to the allegations of Paragraph 24 and as such leaves Plaintiff to its proof.
25. The allegations of Paragraph 25 are denied.
26. The allegations of Paragraph 26 state a legal conclusion to which no response is required.

27. The allegations of Paragraph 27 state a legal conclusion to which no response is required.

28. The allegations of Paragraph 28 are admitted.

29. The allegations of Paragraph 29 state a legal conclusion to which no response is required.

To the extent a response is required, the allegations of Paragraph 29 are denied.

30. The allegations of Paragraph 30 state a legal conclusion to which no response is required.

To the extent a response is required, the allegations of Paragraph 30 are denied.

31. The allegations of Paragraph 31 state a legal conclusion to which no response is required.

To the extent a response is required, the allegations of Paragraph 31 are denied.

32. The allegations of Paragraph 32 state a legal conclusion to which no response is required.

To the extent a response is required, the allegations of Paragraph 32 are denied.

33. The allegations of Paragraph 33 are admitted to the extent they allege that Plaintiff

suggested modification of the emergency services agreement. The remaining allegations in Paragraph 33 state a legal conclusion to which no response is required. To the extent a response is required, the allegations of Paragraph 33 are denied.

34. The Defendant lacks sufficient information to respond to the allegations of Paragraph 34 and as such leaves Plaintiff to its proof.

35. The allegations of Paragraph 35 are denied.

36. The allegations of Paragraph 36 are admitted to the extent said Paragraph alleges that a letter was sent. As to the remainder of the allegations, the Defendant lacks sufficient information to respond and as such leaves Plaintiff to its proof.

37. The allegations of Paragraph 37 are admitted to the extent said Paragraph alleges that a letter was sent. As to the remainder of the allegations, the Defendant lacks sufficient information to respond and as such leaves Plaintiff to its proof.
38. The allegations of Paragraph 38 are admitted to the extent said Paragraph alleges that a letter was sent. As to the remainder of the allegations, the Defendant lacks sufficient information to respond and as such leaves Plaintiff to its proof.
39. The allegations of Paragraph 39 state a legal conclusion to which no response is required. To the extent a response is required, the Defendant lacks sufficient information to respond and as such leaves Plaintiff to its proof.
40. The allegations of Paragraph 40 are denied to the extent they allege that the First Selectman acted unreasonable, refused to be cooperative or threatened Mr. Savalle. Defendant admits that the First Selectman sent a letter in his capacity as First Selectman for the Town of Salem. As to the remaining allegations, Defendant lacks sufficient information to respond and as such, leaves Plaintiff to its proof.
41. The allegations of Paragraph 41 are denied to the extent that they allege that Defendant's apprehension in accepting a third party "summary" of "federal precedent" in making employment related decisions regarding violations of the Federal Labor Standards Act was "unwarranted." As to the remaining allegations, the Defendant lacks sufficient information to respond and as such leaves Plaintiff to its proof.

42. So much of Paragraph 42 as alleges that meetings occurred between representatives of the GLVFC and the Fire Marshals in January and February of 2020 is admitted. The remaining allegations of Paragraph 42 are denied.
43. The allegations of Paragraph 43 are denied to the extent that they allege that Defendant acted unreasonably or that Defendant's conduct caused the death of a resident or to the extent that they allege that the resident's "stroke symptoms" would have been prevented or otherwise changed had Mr. Savalle been present on the scene. As to the remaining allegations, the Defendant lacks sufficient information to respond and as such leaves Plaintiff to its proof.
44. The Defendant lacks sufficient information to respond to the allegations of Paragraph 44 and as such leaves Plaintiff to its proof.
45. The Defendant lacks sufficient information to respond to the allegations of Paragraph 45 and as such leaves Plaintiff to its proof.
46. The allegations of Paragraph 46 are admitted to the extent they allege that Plaintiff demanded payment. To the extent the allegations of Paragraph 46 alleges that the Defendant was under an obligation or duty to make payment, such allegations are denied.
47. The allegations of Paragraph 47 are denied.
48. The Defendant lacks sufficient information to respond to the allegations of Paragraph 48 and as such leaves Plaintiff to its proof.
49. The allegations of Paragraph 49 are denied.

50. The Defendant lacks sufficient information to respond to the allegations of Paragraph 50 and as such leaves Plaintiff to its proof.

COUNT TWO: BREACH OF IMPLIED CONTRACT

1-48. Whereas, Plaintiff has realleged Paragraphs 1-48 of the first count as Paragraphs 1-48 of the second count, Defendant likewise asserts its responses thereto as if individually set forth herein.

49. The allegations of Paragraph 49 are denied.

50. The Defendant lacks sufficient information to respond to the allegations of Paragraph 50 and as such leaves Plaintiff to its proof.

COUNT THREE: UNJUST ENRICHMENT

1-48. Whereas, Plaintiff has realleged Paragraphs 1-48 of the first count as Paragraphs 1-48 of the third count, Defendant likewise asserts its responses thereto as if individually set forth herein.

49. The allegations of Paragraph 39 state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

50. The Defendant lacks sufficient information to respond and as such leaves Plaintiff to its proof.

COUNT FOUR: TORTIOUS BREACH OF CONTRACT

1-48. Whereas, Plaintiff has realleged Paragraphs 1-48 of the first count as Paragraphs 1-48 of the fourth count, Defendant likewise asserts its responses thereto as if individually set forth herein.

49. The allegations of Paragraph 49 state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

50. The allegations of Paragraph 50 are admitted to the extent they allege a complaint was filed with the Freedom of Information Commission. The allegations of Paragraph 50 are further admitted to the extent that they allege no requests were made and no such complaint was filed as to the Salem Volunteer Fire Company. The remaining allegations of Paragraph 50 are denied.

51. The allegations of Paragraph 51 are denied.

52. The allegations of Paragraph 52 are denied.

53. The allegations of Paragraph 53 are denied.

54. The allegations of Paragraph 54 are denied.

55. The allegations of Paragraph 55 are denied to the extent they allege that First Selectman Lyden intends to gain “control” of Plaintiff. As to the remaining allegations, the Defendant lacks sufficient information to respond and as such leaves Plaintiff to its proof.

56. The allegations of Paragraph 56 are denied.

57. The allegations of Paragraph 57 are denied.

SPECIAL DEFENSES

AS TO COUNT ONE

1. Plaintiff's claims are barred by governmental immunity pursuant to common law and Conn. Gen. Stat. §52-557n.
2. Plaintiff has failed to state a cause of action upon which relief may be granted.
3. Accord and Satisfaction - To the extent Plaintiff alleges failure of Defendant to make payments due pursuant to an alleged contract, Defendant has paid any amounts due.
4. Waiver – Plaintiff has waived any right to relief through its breach of any alleged agreement between the parties.
5. Any damages alleged by the Plaintiff were created by its own conduct and/or the conduct of its agents or representatives.

AS TO COUNT TWO

1. Plaintiff's claims are barred by governmental immunity pursuant to common law and Conn. Gen. Stat. §52-557n.
2. Plaintiff has failed to state a cause of action upon which relief may be granted.
3. Accord and Satisfaction - To the extent Plaintiff alleges failure of Defendant to make payments due pursuant to an alleged contract, Defendant has paid any amounts due.
4. Waiver – Plaintiff has waived any right to relief through its breach of any alleged agreement between the parties.

5. Any damages alleged by the Plaintiff were created by its own conduct and/or the conduct of its agents or representatives.

AS TO COUNT THREE

1. Plaintiff's claims are barred by governmental immunity pursuant to common law and Conn. Gen. Stat. §52-557n.
2. Plaintiff has failed to state a cause of action upon which relief may be granted.
3. Accord and Satisfaction - To the extent Plaintiff alleges failure of Defendant to make payments due pursuant to an alleged contract, Defendant has paid any amounts due.
4. Waiver – Plaintiff has waived any right to relief through its breach of any alleged agreement between the parties.
5. Any damages alleged by the Plaintiff were created by its own conduct and/or the conduct of its agents or representatives.

AS TO COUNT FOUR

1. Plaintiff's claims are barred by governmental immunity pursuant to common law and Conn. Gen. Stat. §52-557n.
2. Plaintiff has failed to state a cause of action upon which relief may be granted.
3. Any actions taken by the Defendant through its agents or representatives were taken in protection of Defendant's interests and those of the residents of the Town of Salem with no improper motive(s).

4. Waiver – Plaintiff has waived any right to relief through its breach of any alleged agreement between the parties.
5. Waiver – Any allegations made on behalf of Mr. Sevalle in support of Plaintiff’s Count Four are waived and or barred in whole or in part by agreement entered into and consented to by Mr. Sevalle, and Defendant.
6. Lack of subject matter jurisdiction – Plaintiff lacks standing to bring allegations on behalf of a non-party. More specifically, the allegations regarding Mr. Sevalle.
7. Any damages alleged by the Plaintiff were created by its own conduct and/or the conduct of its agents or representatives.

COUNTERCLAIM

COUNT ONE: BREACH OF CONTRACT

1. Counterclaim Plaintiff, Town of Salem is a municipality and a subdivision of the State of Connecticut (the “Town”) and possesses the powers set forth in Connecticut General Statutes §7-148, including the power to contract and to sue and be sued.
2. Counterclaim Defendant, The Gardiner Lake Volunteer Fire Company, Inc (hereinafter referred to as “GLVFC”) is a non-stock Corporation organized and existing under the laws of the State of Connecticut with its principal place of business at 429 Old Colchester Road, Salem, Connecticut 06420.

3. According to its bylaws, approved in November of 2012, the purpose of the GLVFC is to take all actions necessary to prevent loss of life or property by fire or other emergency which may arise, to provide medical transportation and treatment to the citizens of, and residents of the Town of Salem Connecticut (the “Services”).
4. In conjunction with and in furtherance of the provision of the Services by GLVFC, in March of 2003, the Town and GLVFC agreed and the Board of Selectmen for the Town approved the following (the “2003 Agreement”):
 1. Upon reasonable request and at reasonable intervals, the Salem Town Auditor would have access to the books and records of the Gardiner Lake Fire Company, Inc. regarding the funds received by the Fire Company for the provision of ambulance services, and the expenses incurred in connection with the provision of those services. The Gardiner Lake Fire Company would cooperate with the Town Auditor in his or her review of the books and records, and the Town Auditor would report his or her findings to the appropriate officials of the Town of Salem.
 2. The Gardiner Lake Fire Company plans to use the net funds from the provision of ambulance services (i.e. the amount remaining after the payment of expenses associated with the provision of those services) for the following purposes:
 - a. The purchase of a new ambulance to replace the ambulance presently being used.
 - b. Once sufficient funds are used (or set aside) for the new ambulance, a sinking fund would be set up and annual deposits would be made to fund the replacement of the new ambulance at the end of its useful life (estimated to be ten years).
 - c. Remaining funds would be used for supplies and equipment for medical, emergency and related services in the Town of Salem.

5. Subsequent to the 2003 Agreement, and in conjunction with and in furtherance of provision of the Services by GLVFC, the Town and GLVFC agreed as follows (the “2006 Agreement”):

II. The Town and the Fire Company do further mutually agree that the Town shall continue to appropriate sufficient funds to the Fire Company for the operation, maintenance, and purchase of equipment based upon an estimated budget prepared by the Fire Company and submitted to the Town subject to approval by the Salem Board of Finance and the Salem Town Meeting.

6. Upon information and belief, the only sources of funds for operation of GLVFC are funding appropriated and paid from the Town and funding received by GLVFC for provision of ambulance services as referenced in the 2003 Agreement.
7. At all times relevant to this Counterclaim, all funding received by the GLVFC was to be used for various but very specific purposes as outlined in the 2003 Agreement and the 2006 Agreement.
8. In Paragraph 48 of its Complaint, GLVFC indicates that it has used funds designated to its “sinking fund” allocated to purchase a new ambulance for the use in provision of the Services pursuant to the 2003 Agreement to provide stipends to its members.
9. In addition, and upon information and belief, GLVFC has used further funds provided by the Town and or obtained through the provision of ambulance services to pay legal fees associated with this litigation.

10. Counterclaim Defendant's conduct as described herein was willful, intentional and/or evidences a reckless indifference to the Town of Salem and its residents.
11. The above referenced uses of such funds by GLVFC for expenses, costs, stipends, legal fees or purposes other than those permitted in the 2003 Agreement, 2006 Agreement or uses approved by the Town through its budgeting process constitutes a misappropriation of those funds and a breach of the 2003 Agreement and the 2006 Agreement.
12. The Counterclaim Plaintiff has suffered damages as a result of the Counterclaim Defendant's conduct.

COUNT TWO: UNJUST ENRICHMENT

- 1-10. Paragraphs 1-10 of Count One are realleged and incorporated herein by reference and made Paragraphs 1-10 of this Count Two as though fully set forth herein.
11. Counterclaim Plaintiff provided two paid Town employees to assist Counterclaim Defendant with operation of its ambulance services.
12. The Town employees assisted with the ambulance service in order to both ensure that such service remained available to residents of the Town, but also to ensure that the funding generated by such service would continue to be available for the purchase of a new ambulance and emergency services equipment and supplies.
13. Counterclaim Defendant received the benefit of the Town's employees, the funds received from the Town and/or from the provision of ambulance services and has not used those funds as agreed by the parties.

14. Upon information and belief, the ambulance currently used by GLVFC has reached, or is very close to reaching the end of its useful life and will need replacement.

15. By and through its conduct as described herein, Counterclaim Defendant has been unjustly enriched.

16. As a result of Counterclaim Defendant's conduct, including without limitation, its misappropriation of funds allocated for the purchase of a new ambulance, the Counterclaim Plaintiff has suffered damages.

WHEREFORE, the Counterclaim Plaintiff demands judgment against the Counterclaim Defendant Gardiner Lake Volunteer Fire Company, Inc, and the following:

1. Compensatory damages;
2. Costs and attorney's fees; and
3. Such other and further relief deemed just and or proper by the Court.

DEFENDANT/COUNTERCLAIM PLAINTIFF
TOWN OF SALEM

By: /s/ Dean A. Hanafin
Dean A. Hanafin, Esq. of
Conway, Londregan, Sheehan & Monaco, P.C.
38 Huntington St.
New London, CT 06320
860-447-3171
Juris No. 010792
Its Attorneys

CERTIFICATE OF SERVICE

This is to certify that on this 22nd day of December 2022, a copy of the foregoing Memorandum of Law in Support of Motion to Dismiss was mailed, first class, postage prepaid, to the following:

Jacques J. Parenteau, Esq.
Madsen, Prestley & Parenteau, LLC
105 Huntington Street
New London, CT 06320

/s/ Dean A. Hanafin
Dean A. Hanafin, Esq.